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IN THE COURT OF APPEALS OF INDIANA

MICHAEL CRAIG,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-0710-CR-471
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Cecile A. Blau, Judge
Cause No. 10C02-0111-CF-278

March 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

In challenging the revocation of his probation and reinstatement of his ten-year sentence, Michael Craig contends that the court abused its discretion by not explaining why it chose to execute the entire term and by not awarding him credit for time served. We affirm.

Facts and Procedural History

On November 24, 1981, a Clark County jury found Craig guilty of felony murder. *Craig v. State*, 452 N.E.2d 921, 922 (Ind. 1983). He received a sixty-year sentence. *Id*. On March 6, 1992, Craig's sentence was modified to forty years with twenty years added for aggravating circumstances and ten years "suspended to strict Terms of Probation." Appellant's App. at 13. The terms of probation ordered Craig to refrain from, *inter alia*, committing crimes or possessing firearms, weapons, and/or knives. *Id*. at 14.

The State filed in Clark County a petition to revoke Craig's probation on October 4, 2006, and an amended petition the following month. *Id*. at 6-7, 13-15. The State alleged that on October 2, 2006 in White County, Craig, a serious violent felon, possessed a firearm (class B felony), committed residential entry (class D felony), and failed to appear for a scheduled probation appointment. *Id*. at 14. On June 28, 2007, the Clark Superior Court held a hearing at which Craig indicated his intention to enter into a blind plea admission to the petition to revoke probation. Tr. at 3.[1] We include portions of the transcript:

> MR. GANNON [defense counsel]: Mr. Craig faces, his jeopardy is for ten years.

[1] In addition to being convicted of class B felony possession of a firearm by a serious violent felon, Craig admitted to being a habitual offender. State's Exh. 1.

> THE COURT: Okay. I just want to make sure that both Mr. Craig and the Court understood time on the shelf and what his maximum exposure was here.
> … .
> MR. GRIMES [chief deputy prosecuting attorney]: Judge, there's no agreement [between Craig and the State]. I would recommend that he be revoked for all ten years and that it be served consecutive to the sentence [that he will receive on July 3rd for his June 6th conviction of class B possession of a firearm by a serious violent felon in White County].

Id. at 4-6. Defense counsel asked that the court "show some leniency given the fact that there is some issue to be presented to the Court of Appeals to review [the White County] conviction and possibly have it overturned." *Id*. at 9.

After administering the oath to Craig, the court questioned him as follows:

> Q. And you are here voluntarily for a blind admission for agreeing or admitting that you have violated the terms of your probation. Is that correct?
> A. Yeah (yes), get ten and go.
> Q. I'm sorry?
> A. Get ten and go.
> Q. Well, I guess my next question you've already answered. Do you understand that your maximum exposure is to get ten and go?
> A. Yes.
> Q. All right. And with that in mind do you wish to go ahead and go through the procedure today?
> A. Sure.

Id. at 7. The chief deputy prosecuting attorney then established a factual basis. The court inquired if Craig agreed that he had violated the terms of his probation; he did. *Id*. at 9. At that point, the court found a violation, revoked Craig's probation, and ordered him to serve the previously suspended ten-year sentence. *Id*. at 10.

Discussion and Decision

Standard of Review

"Probation is a favor granted by the State, not a right to which a criminal defendant is entitled." *Sanders v. State*, 825 N.E.2d 952, 955 (Ind. Ct. App. 2005), *trans. denied*. A probationer faced with a petition to revoke his probation is not entitled to the full panoply of rights he enjoyed prior to the conviction. *Rosa v. State*, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005). "The rules of evidence do not apply in a revocation proceeding, and the State's burden of proof is lower, as the State need prove an alleged violation of probation by only a preponderance of the evidence." *Id*. "'Preponderance of the evidence,' when used with respect to determining whether or not one's burden of proof has been met, simply means the 'greater weight of the evidence.'" *Travelers Indem. Co. v. Armstrong*, 442 N.E.2d 349, 361 (Ind. 1982) (citation omitted).

Generally, if a trial court both follows the procedures outlined in Indiana Code Section 35-38-2-3 and finds that a probationer has violated even one condition of probation, the court may revoke his probation and order execution of all or a portion of the previously suspended sentence. *T.W. v. State*, 864 N.E.2d 361, 364 (Ind. Ct. App. 2007), *trans. denied*; Ind. Code § 35-38-2-3(g)(3).[2] Probation revocation is often broken down into two steps. First, the court must make a factual determination that a violation of a condition of probation actually has

[2] Effective July 1, 2005, Indiana Code Section 35-38-2-3 was amended to explicitly allow a trial court to order execution of "all or part of" a probationer's suspended sentence. P.L. 13-2005. *See also Stephens v. State*, 818 N.E.2d 936, 941-42 (Ind. 2004). It is worth noting that a court cannot, upon revoking probation, order a sentence longer than the one that was originally set out (albeit suspended) in a plea agreement. *See Cox v. State*, 850 N.E.2d 485, 490-91 (Ind. Ct. App. 2006).

occurred. If a violation is proven, then the court moves to the second step: determining if the violation warrants revocation of the probation. *Cox*, 850 N.E.2d at 488. If, as in Craig's case, the probationer admits to a violation or violations, the procedural due process safeguards and evidentiary hearing ordinarily required by Indiana Code Section 35-38-2-3 are not necessary. *See Sanders*, 825 N.E.2d at 955. Instead, the court can proceed directly to the second step of the inquiry and determine whether the violation merits revocation. *See Parker v. State*, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997).

We review the trial court's decision to revoke probation for an abuse of discretion. *Rosa*, 832 N.E.2d at 1121. An abuse of discretion occurs "if the decision is against the logic and effect of the facts and circumstances before the court." *Whatley v. State*, 847 N.E.2d 1007, 1009 (Ind. Ct. App. 2006).

Explanation for Reinstating Entire Term

Craig asserts:

> While the court certainly had the discretion to revoke the entire suspended sentence, the failure to provide any explanation for the disposition imposed makes appellate review difficult. The trial court did not expand on its reasons for executing the entirety of the sentence at the hearing, nor were any explanations forthcoming in the court's written order revoking Craig's probation. … Given the discretion granted the trial court under such circumstances, an explanation for the disposition chosen *should* be provided.

Appellant's Br. at 7 (emphasis added).

Craig cites no legal authority to support the above assertions. Indiana Code Section 35-38-2-3 sets out a variety of procedural safeguards for probation revocations. However, it contains no requirement that a court expound upon its reasons for ordering a partial or full reinstatement of sentence once the court determines that a violation of probation has

occurred. We have located no case law that suggests – let alone mandates – such an explanation. The only case we have found that discusses this question reached a conclusion opposite to that advocated by Craig. *Bussberg v. State*, 827 N.E.2d 37 (Ind. Ct. App. 2005), *trans. denied.* [3] There, a panel of this court stated:

> Neither *Stephens* nor *Pugh*[4] address whether a trial court must specify why it chooses to impose the entire suspended portion of a sentence or a lesser period upon a finding of a probation violation. Additionally, there is nothing implicit within those decisions which leads us to conclude that a trial court must give reasons why it is choosing to impose the particular punishment that it does for a probation violation. More importantly, Bussberg has not cited to any authority, nor have we found any, which requires a trial court to explain the particular punishment for a probation violation.

Id. at 43-44 (affirming revocation of probation and sentence).

At Craig's revocation hearing, he admitted to violating the terms of probation. Tr. at 9. On appeal, he does not challenge his violation, nor does he argue that the ten-year sentence was beyond that authorized by the original sentence. He does not claim that he was unaware of the potential for reinstatement of his previously suspended ten-year sentence. To the contrary, as shown by the excerpts *supra*, Craig indicated more than once that he was cognizant of precisely what he was facing. Craig and his counsel offered no mitigating evidence and merely requested that the court consider the possibility of an appeal of Craig's

[3] Oddly, the State has not cited *Bussberg*.

[4] These references are to *Pugh v. State*, 804 N.E.2d 202 (Ind. Ct. App. 2004), *Pugh v. State*, 819 N.E.2d 375 (Ind. 2004), *Stephens v. State*, 801 N.E.2d 1288 (Ind. Ct. App. 2004), and *Stephens v. State*, 819 N.E.2d 375 (Ind. 2004). See *Bussberg* , 827 N.E.2d at 43, for further discussion of these cases.

latest conviction.[5] Under these circumstances, we see no reason to deviate from *Bussberg*'s teachings. We conclude that the court did not abuse its discretion when it did not detail its reasons for reinstating Craig's previously suspended ten-year sentence.

Credit Time

During Craig's revocation hearing, neither he nor his counsel requested credit for time served. However, on appeal, Craig maintains that the court abused its sentencing discretion when it did not give him credit for 253 actual days that he served prior to the imposition of the sentence for violating his probation. Appellant's Br. at 5-6. He claims that he was incarcerated since October 19, 2006, under warrants issued as a result of the revocation petition, and therefore, should receive credit time. The State responds that Craig "received credit for the 253 days, plus good time from [the White County] court" and thus should not get "double" credit. Appellee's Br. at 7.

Indiana inmates imprisoned awaiting trial or sentencing earn Class I credit. *State v. Eckhardt*, 687 N.E.2d 374, 376 (Ind. Ct. App. 1997). "Determination of a defendant's pretrial credit is dependent upon (1) pretrial confinement, and (2) the pretrial confinement being a result of the criminal charge for which sentence is being imposed." *Willoughby v. State*, 626 N.E.2d 601, 602 (Ind. Ct. App. 1993); *see* Ind. Code § 35-50-6-3(a) ("A person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing."); *see also Cohen v. State*, 560 N.E.2d 1246, 1249 (Ind. 1986). "[E]ach court is responsible only for crediting time in confinement as a result of

[5] Furthermore, on appeal, Craig raises no potential mitigating factors, nor does our review of his presentence report reveal any reason to believe the ten-year reinstated sentence could have been an abuse of

the charge for which that court is sentencing the defendant." *Carneal v. State*, 859 N.E.2d 1255, 1258 (Ind. Ct. App. 2007) (emphasis omitted), *trans. denied*.

"[P]re-sentence jail time credit is a matter of statutory right, not a matter of judicial discretion." *Weaver v. State*, 725 N.E.2d 945, 948 (Ind. Ct. App. 2000). That said, Craig's statutory right to credit time is not unlimited. "It is well-settled that where a person incarcerated awaiting trial on more than one charge is sentenced to concurrent terms for the separate crimes, IC 35-50-6-3 entitles him to receive credit time applied against each separate term." *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied*. "However, where he receives consecutive terms he is only allowed credit time against the total or aggregate of the terms." *Id*.

The White County crime was committed while Craig was on probation for the Clark County murder. Indiana Code Section 35-50-1-2(d), in pertinent part provides, "If, after being arrested for one (1) crime, a person commits another crime: (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; ... the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed." Therefore, the sentences for the White County crime and the Clark County probation revocation had to run consecutive to each other. Moreover, Craig could receive credit only against the aggregate sentence. *See Peace v. State*, 736 N.E.2d 1261, 1267 (Ind. Ct. App. 2000), *trans. denied*. If, as the State claims, the court in White County gave Craig credit for 253 days, then the Clark Superior Court correctly did *not* award credit toward the reinstated ten-year sentence for the

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discretion.

revocation of probation, because to do so would have been an improper double credit. Unfortunately, the State fails to include a citation that would confirm that the court in White County actually did award Craig 253 days of credit time. However, a careful examination of the materials presented to us on appeal supports the State's brief in this regard.

On October 2, 2006, Craig was residing in White County, where his probation "basically" had been transferred from Clark County, where he was convicted for murder. Tr. at 7-8 (Craig's testimony at revocation hearing). On October 3, 2006, the White County probation department sent a letter to the Clark County probation department stating that Craig failed to report to probation, that a firearm was found at his residence, that he was a person of interest in numerous burglaries in White County, and that he fled from police on the previous day. App. at 26. On October 4, 2006, in Clark County, the original petition to revoke Craig's probation was filed, and an accompanying arrest warrant was issued. *Id.* at 6-10. There is no indication that any warrant was *served* until October 19, 2006. On that day, an arrest warrant for the White County charges was issued, and Craig, who had been residing in White County, was incarcerated – very likely in White County. Exhs. 1; Appellant's Br. at 9. The Clark County, October 19, 2006 CCS entry states: "WARRANT SERVED 10/19/06 BRING TO COURT 10/24/06 … on State's Petition to Revoke Probation." App. at 3. Thus, beginning on October 19, 2006, Craig was effectively being held on the White County charges and the Clark County original petition to revoke probation. Not until November 29, 2006 was the amended petition for revocation of probation filed and a new arrest warrant issued in Clark County. *Id*. at 13. Because Craig was "confined in the White County,

Indiana Jail," transport orders were necessary to permit Craig's attendance at the revocation proceedings in Clark County. *Id*. at 31.

Given the above facts, we think it highly likely that the court in White County would have granted Craig the 253 days of credit in its case, thus making the lack of credit in the Clark County revocation case proper. Of note, Craig filed no reply brief or supplemental materials to contradict the State's contention that the court in White County awarded him credit. If per chance the State is mistaken or made a misrepresentation, and Craig truly received no credit from either court, a petition for post-conviction relief may be an option for obtaining such credit. *See McGee v. State*, 790 N.E.2d 1067, 1069 (Ind. Ct. App. 2003), *trans. denied*. In any event, at this juncture, we conclude that Craig has not demonstrated that the Clark Superior Court abused its discretion by not awarding him credit time.

Affirmed.

BAILEY, J., and NAJAM, J., concur.